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Emily B Caudill REGULATIONS COMPILER

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amended After Comments)

5 701 KAR 8:040. Conversion charter school petition, conversion, and operation.

6 RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596,
7 160.1597, 160.1598, 160.1599, 161.141

8 STATUTORY AUTHORITY: KRS 160.1599

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1599 requires the Kentucky Board
10 of Education to promulgate an administrative regulation to govern the processes and procedures
11 for the petition, the conversion, and the operation of a conversion public charter school. This
12 administrative regulation provides requirements for conversion public charter schools.

13 Section 1. Definitions. (1) "Adult student" means a student who is eighteen (18) years or older
14 who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030
15 and 158.100.

16 (2) "Applicant" is defined in KRS 160.1590(3).

17 (3) "Charter application" is defined in KRS 160.1590(4).

18 (4) "Charter contract" or "contract" is defined in KRS 160.1590(5).

19 (5) "Charter school" means a public charter school.

20 (6) "Charter school board of directors" is defined in KRS 160.1590(6).

21 (7) "Conversion public charter school" or "conversion charter school" is defined in KRS

- 1 160.1590(7).
- 2 (8) "Days" means calendar days calculated pursuant to KRS 446.030.
- 3 (9) "Emancipated youth" means a student under the age of eighteen (18) who is or has been
4 married or has by court order or otherwise been freed from the care, custody, and control of the
5 student's parents.
- 6 (10) "Enrollment" means the process for the charter school to register a student for attendance at
7 the charter school.
- 8 (11) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of
9 school.
- 10 (12) "Local board of education" means local school board as defined in KRS 160.1590(9).
- 11 (13) "Local school district" is defined in KRS 160.1590(10).
- 12 (14) "Lottery" means the transparent, open, equitable, and impartial process that is competently
13 conducted with randomization in accordance with the targeted student population and service
14 community as identified in KRS 160.1593(3) for the charter school to choose students for
15 enrollment and attendance at the charter school when the student applications received by the
16 charter school exceed the charter school's capacity.
- 17 (15) "Notice" means written notice.
- 18 (16) "Notify" means provide written notice.
- 19 (17) "Parent" is defined in KRS 160.1590(11).
- 20 (18) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls
21 within the definition of KRS 387.010(2) for interested person or entity and with whom the
22 student resides.
- 23 (19) "Petitioner" means the persons or organizations initiating and circulating a petition to

convert an existing public school to a charter school.

(20) "Public charter school" is defined in KRS 160.1590(12).

(21) "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(22) "Student" is defined in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(23) "Student application" means an application submitted to a charter school for student enrollment in the charter school.

(24) "Superintendent" means the local school district employee tasked with the duties described in KRS 160.370.

(25) "Year" or "Academic year" or "School year" means school year as defined in KRS 158.050.

Section 2. Conversion Petition and Charter Application. (1) The department shall annually publish on its website a list of noncharter public schools, by school level, that are eligible for charter school conversion through the petition process pursuant to KRS 160.1599(2)(a).

(2) Prior to circulation of a petition to convert an existing public school to a charter school, a petitioner shall file a notice of intent with the resident board of education.

(3) If a charter application proposes that a newly converted charter school is to be established and prepared to enroll students for the next school year, both the charter application and the petition, determined to be valid pursuant to subsection (9) of this section, proposing the conversion of an existing public school to a charter school shall be submitted to the authorizer on or before October 30.

(4) A petitioner shall utilize the Public Charter School Conversion Petition and shall include the following information in a petition to convert an existing public school to a charter school:

1 (a) A written statement that the petition seeks to convert the existing public school to a charter
2 school;

3 (b) A written statement of the reasons the petitioner believes the existing public school should be
4 converted to a charter school, including descriptions of how the conversion public charter school
5 shall accomplish the purposes of KRS 160.1591(2); and

6 (c) Information for filing a written complaint to the commissioner of education regarding the
7 petition or the petitioner.

8 (5) For the signatures on the petition to count toward the requirements of KRS 160.1599(2)(a) or
9 (b), a petitioner shall ensure inclusion of the following from each of the existing public school's
10 resident parents, persons with custody or charge, adult students, or emancipated youth students
11 signing the petition:

12 (a) Their printed names;

13 (b) Their mailing and street address, phone number, and email address, as available; and

14 (c) Their signature in ink or indelible pencil;

15 (6) The inclusion of signatures, from adult students, emancipated youth students, or parents or
16 persons with custody or charge, on behalf of students who do not attend the existing public
17 school as residents of the local school district and under the attendance zone boundary policies
18 and procedures of the local board of education for the local school district, shall not count toward
19 the requirements of KRS 160.1599(2)(a) or (b).

20 (7) Signatures from parents, persons with custody or charge, adult students, and emancipated
21 youth students shall count toward the requirements of KRS 160.1599(2)(a) or (b) up to but not in
22 excess of the number of students attending the existing public school for whom those individuals
23 are parents or persons with custody or charge or the students themselves.

(8) The inclusion of an invalid signature on the petition shall not invalidate the entire petition, but shall instead result in the invalid signature being stricken and not counted.

(9) Within thirty (30) days of receipt of a petition for conversion of an existing public school, a local school district designee of the local board of education shall conduct and complete an examination of the signatures on the petition and any necessary investigation to make a determination of whether the petition contains enough signatures of qualified resident adult students, emancipated youth students, and parents and persons with custody or charge of students attending the existing public school to meet the requirements of KRS 160.1599(2)(a) or (b).

(10) Within three (3) days of making the determination in subsection (9) of this section, the local school district designee of each [the] local board of education that has authority over the existing public school shall provide notice as to whether the petition met the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b):

(a) On the local school district website; and

(b) To the following:

1. The petitioner;
2. The existing public school's principal;
3. Any school-based decision making council of the existing public school established under KRS 160.345; and
4. Each [The] local board of education with authority over the existing public school.

(11) For a petition under KRS 160.1599(2)(b), each [the] local board of education's majority vote to convert the existing public school to a charter school shall be conducted at its next regular meeting or an earlier special meeting.

(12) Any person who has reason to believe that the petition process was not conducted pursuant

to the requirements of this administrative regulation or that the signatures on the petition were procured through fraud, intimidation, bribery, or harassment, may file a written complaint with the commissioner of education and the commissioner of education shall:

(a) Cause an investigation to determine the validity of the petition;

(b) Ensure the investigation is completed within thirty (30) days of receipt of the complaint; and

(c) Render a determination as to the validity of the petition.

(13) If the petition fails to meet the requirements of this administrative regulation and KRS 160.1599(2)(a) or (b) or if the commissioner of education determines the petition to be invalid, the existing public school shall not be eligible for conversion to a charter school unless:

(a) Each [The] local board of education with authority over the existing public school acts pursuant to KRS 160.1599(2)(c); or

(b) Another petition is circulated and determined to be valid pursuant to KRS 160.1599(a) or (b) and this administrative regulation.

(14) After any vote by each [the] local board of education required pursuant to KRS 160.1599(2)(b) or (c), an applicant shall submit to the authorizer a charter application to convert an existing public school to a charter school during the same school year as:

(a) Each [The] local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each [the] local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(15) After any vote by each [the] local board of education required pursuant to KRS

160.1599(2)(b) or (c), the authorizer shall allow submission of a charter application to convert the existing public school to a charter school during the same school year as:

(a) Each [The] local board of education's vote to convert the existing public school to a charter school, pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each [the] local board of education with authority over the existing public school, if required by KRS 160.1599(2)(b).

(16) The authorizer shall commence the charter application review and approval process

pursuant to KRS 160.1594 and 701 KAR Chapter 8 upon receipt of a charter application to

convert an existing public school to a charter school within the same school year as either:

(a) Each [The] local board of education's vote to convert an existing public school to a charter school pursuant to KRS 160.1599(2)(c); or

(b) 1. The circulation of a petition pursuant to KRS 160.1599(2)(a) or (b);

2. The issuance of the determination in subsection (9) of this section that the petition is valid; and

3. A majority vote of each [the] local board of education, if required by KRS 160.1599(2)(b).

(17) The authorizer shall review the petition and a submitted charter application and only

approve the conversion of an existing public school if the charter application meets the

requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and if:

(a) The petition meets the requirements of KRS 160.1599 and this administrative regulation

during the same school year as the filing of the charter application, and if the commissioner of

education has not determined the petition to be invalid; or

(b) Each [The] local board of education with authority over the existing public school has

voted within the same school year to convert an existing public school to a charter school.

(18) The department shall create a charter school conversion petition and application guidance document that petitioners, applicants, authorizers, and local boards of education may utilize.

Section 3. Conversion. (1) No conversion public charter school shall begin operation after the beginning of a school year.

(2) After each [the] local board of education's vote to convert an existing public school to a charter school or completion of the petition process requirements of KRS 160.1599(2)(a) or (b) and this administrative regulation, and after the authorizer's approval of a charter application to establish a conversion public charter school, each [the] superintendent of a district with

authority over the existing public school shall:

(a) Notify resident students of the conversion of the existing public school and provide information for student application to the conversion charter school during the time that information on other school programs in the local school district is provided;

(b) Create with the conversion charter school board of directors a plan for conversion of the existing public school which will include, at a minimum, timelines, roles, responsibilities, and notification requirements for the following:

1. Coordination of student application, lottery, enrollment, and transfer to and from the conversion charter school; and

2. Transfer of management and operation of the conversion charter school in the same public school facility for the school years included in the conversion charter school's operation under the charter contract;

(c) Meeting during the first year of the charter contract with the charter school board of directors to coordinate student application, lottery, enrollment, and transfer of students; and

(d) Meeting throughout the charter contract with the charter school board of directors regarding the usage and maintenance of the facility by the charter school board of directors.

(3) Each [The] local board of education with authority over the existing public school and the conversion charter school board of directors shall execute a lease for the public school facility prior to the operation of a conversion public school.

(4) The department shall create a charter school conversion process guidance document that an authorizer, local board of education, and a charter school board of directors may utilize.

Section 4. Employees. (1) Local school district employees placed in the existing public school prior to conversion, who are not hired by the conversion charter school board of directors to work in the converted charter school, shall retain their employment rights with the local school district, pursuant to KRS Chapter 161 and under the provisions of any collective bargaining agreement with the local school district. Conversion of an existing public school of the local school district may result in the circumstances described in KRS 161.800 and 161.011 necessitating the local school district superintendent's review of the necessity for a reasonable reduction in the number of teachers and classified employees employed by the local school district under KRS 161.800 and 161.011.

(2) A teacher, with continuing status pursuant to KRS Chapter 161, who is employed by a Kentucky local school [the] district, who is hired by the conversion charter school board of directors to work in the converted charter school, and who is granted leave by the employing local board of education pursuant to KRS 160.1593(22), shall notify the local school district of the teacher's intent to work in the converted charter school or to return to employment with the local school district the next school year by April 15 of each year of the granted leave.

(3) The department shall create a charter school conversion employee transition guidance

document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 5. Students. (1) Each local school ~~[The]~~ district with authority over the existing public school shall provide, to the students and parents and persons with custody or charge of students who attend an existing public school that has been approved for conversion to a charter school, information and any plan the local school district shall ~~[will]~~ use to address the educational needs and placements of students who choose not to attend the conversion charter school.

(2) The department shall create a charter school conversion student transition guidance document that an authorizer, local board of education, and a conversion charter school may utilize.

Section 6. Operation and Reversion of a Conversion Charter School. (1) An authorizer may otherwise renew, non-renew, revoke, or take other action regarding a conversion public charter school as provided in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

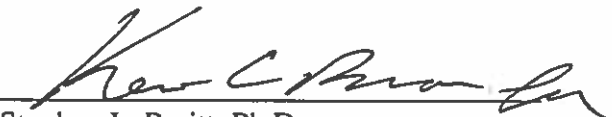
(2) If a closed conversion charter school is reverting back to its noncharter status, each ~~[the]~~ local board of education with authority over the existing public school shall solicit feedback on the future of the school from parents, persons with custody or charge, adult students, and emancipated youth students of the school prior to the reversion.

Section 7. Incorporation by Reference. (1) "Public Charter School Conversion Petition", February 2018, is incorporated by reference.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

12-14-17
(Date)


Stephen L. Pruitt, Ph.D.
Commissioner of Education

12/14/17
(Date)


Mary Gwen Wheeler, Chair
Kentucky Board of Education

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 701 KAR 8:040

Agency Contact Person: Kevin C. Brown

Phone: 502-564-4474

Email: kevin.brown@education.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141 became effective on June 29, 2017. This administrative regulation provides guidance on student application, lottery, and enrollment in public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on student application, lottery, and enrollment in the public charter schools. This administrative regulation provides guidance from the agency on student application, lottery, and enrollment in the public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations provides guidance from the agency on conversion charter school creation and operation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: The authorizing statute requires the agency to provide guidance on conversion charter school creation and operation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take

to comply with this administrative regulation or amendment: School districts, whose students seek enrollment in public charter schools, will have to verify valid conversion petitions. Public charter schools, who seek to enroll students, will not be impacted. Students, who seek enrollment in a public charter school, will need to determine if the conversion school still meets their education needs. The Kentucky Department of Education shall provide support to ensure the transparent and uniform guidance on conversion charter school creation and operation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for public charter schools should be minimal to none because this administrative regulation should provide guidance and relevant documents on conversion charter school creation and operation. Same for students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will provide guidance and relevant documents on conversion charter school creation and operation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No fees or additional funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 701 KAR 8:040

Contact Person: Kevin C. Brown

Phone: 502-564-4474

Email: kevin.brown@education.ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no impact on the expenditures or revenues for school districts or public charter schools.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to none.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

There should be no fiscal impact resulting from the new administrative regulation.

STATEMENT OF CONSIDERATION
RELATING TO 701 KAR 8:040
Kentucky Department of Education

Amended After Comments

1. A public hearing was held on the above regulation on November 21, 2017 at 10:00 a.m. Eastern Time, in Room 116, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky. Written comments were also received during the public comment period.

2. The following individuals attended this public hearing or submitted written or verbal comments:

Disclaimer: All titles and affiliations were provided by the commenters through public written comments or testimony at the public hearing. The titles and affiliations of each person have not been evaluated by the agency, and the listing of specific titles and affiliations in the Statement of Consideration does not confer status or actual authority upon an individual not otherwise qualified by other authoritative source.

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Troy Foster	Private individual and parent of Model Lab student
Angel King	Private individual and parent of Model Lab student
Travis Marcum	Teacher, Model Lab
Carol A. O'Reilly	Kentucky resident and magnet program parent
Mary Ruble, Executive Director	Kentucky Education Association
Lynn Schaber	Potential regional achievement zone charter school applicant
Kerri Schelling, Executive Director	Kentucky School Boards Association
David Wickersham, Director	Office of Education Accountability
Richard Zerbee	Private individual and parent of Model Lab student

3. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>
Kevin C. Brown, General Counsel/Associate Commissioner, Office of Legal, Legislative, and Communication Services (OLLCS)
Amy Peabody, Deputy General Counsel, OLLCS
Earl Simms, Director, Division of Charter Schools

Summary of Comments and Responses

1. Subject Matter: KRS 164.380 practice school eligibility for conversion

(a) Comment: OEA commented that this administrative regulation did not explicitly address practice schools established by a public postsecondary institution under KRS 164.380 and

questioned whether a practice school established under KRS 164.380 would be eligible for conversion to a charter school, and the conversion charter school enrollment preference for current students. Mr. Zerbee and Ms. King and Mr. Marcum and Mr. Foster commented that they and other Model Lab parents were requesting that Model Lab be eligible for conversion under KRS 160.1599 and this administrative regulation.

(b) Response: The agency appreciates this comment but responds that action by the Kentucky General Assembly, amending the statutory language, would be required for any existing practice schools established under KRS 164.380 to be eligible for conversion to a charter school. Kentucky statute KRS 160.1591(5) sets forth the enrollment preferences for charter schools and includes an enrollment preference for a conversion public charter school for “students who attended the school the previous school year.” This enrollment preference for the students currently attending a particular school is limited to charter schools that are converted from existing public schools of the district. KRS 160.1590(7) defines a conversion public charter school as “a public charter school that existed as a noncharter public school prior to becoming a public charter school.” This statute, in subsection 17, also defines “start-up public charter school” as “a public charter school that did not exist as a noncharter public school prior to becoming a public charter school”. The two exclusive routes, created by the statutes, for creation of a charter school allow for creation of a public charter school either as a conversion public charter school or a start-up public charter school. Kentucky statute 160.1599 provides the process for conversion of an existing noncharter public school of a district to a conversion public charter school. This process includes three routes to eligibility for conversion and evidences an overall scheme that is available only to schools under the control of the local board of education. KRS 160.290 places schools that are part of the local school district within the control and authority of the local board of education. A school, like Model Lab, is reportedly the only practice school, under KRS 164.380, currently in existence; and, a practice school, like Model Lab, is not a school of a local school district but is instead a school under the authority of a Kentucky public postsecondary educational institution, Eastern Kentucky University (EKU). It is the information of the agency that ECU and the local school district have a contract in place for the operation by ECU and funding of Model Lab and that Model Lab is not a school under the authority of the local board of education. For this reason, this particular school is not eligible for conversion under the statutes, primarily KRS 160.1599, and would not be able to convert to a conversion charter school and provide an enrollment preference to the students who currently attend Model Lab. Any school that is not eligible for conversion under the statutes has to abide by the enrollment preferences set forth in KRS 160.1591(5) for a start-up public charter school, which does not include a preference for students attending a school prior to its conversion to a charter school. This is true for all current schools in existence that are not part of a school district. As well, the agency understands that it may be important to state publicly again that charter schools are schools of choice, as stated by the Kentucky General Assembly in KRS 160.1591(2) in their purposes for this legislation, and no school or student can be forced to seek charter school status or enrollment. Model Lab is not being required by any person or entity to seek charter school status. The current Model Lab can stay intact and not seek charter school status. If Model Lab does choose to seek and receive charter school status, the statutes require that only the enrollment preferences available to start-up charter schools are utilized in an application and enrollment process. For these reasons, a change to this administrative regulation has not been made in response to this comment.

2. Subject Matter: Authority for October 30 deadline of the administrative regulation

(a) Comment: OEA commented that it questioned the authority of the agency to include the October 30th deadline for petition and application in Section 2(3) in the administrative regulation for charter applications and petitions for conversion of an existing public school the next school year.

(b) Response: This portion of the administrative regulation provides as follows:

If a charter application proposes that a newly converted charter school is to be established and prepared to enroll students for the next school year, both the charter application and the petition, determined to be valid pursuant to subsection (9) of this section, proposing the conversion of an existing public school to a charter school shall be submitted to the authorizer on or before October 30.

This deadline is consistent with a deadline for conversion charter school applications in Delaware pursuant to that state's law, again building off the experience of other jurisdictions in creating Kentucky's requirements. See Del. Code Ann. tit. 14, § 511(g)(4). Additionally, the agency's regulatory authority for 701 KAR 8:040 is found in KRS 160.1599(3) and provides the agency the authority to promulgate an administrative regulation to govern "the processes and procedure" for conversion charter school creation, conversion, and operation. The contents of the administrative regulation are well within that authority. No changes have been made to the administrative regulation in response to this comment.

3. Subject Matter: Clarification on the administrative regulation

(a) Comment: OEA commented that it is seeking clarification from the agency on the following, without mention of this administrative regulation:

"Any presently existing public school is prohibited from becoming a public charter school. See comments regarding 701 KAR 8:040.

....

Any existing public school may be a start-up charter school. See comment upon 701 KAR 8:040.

A local board of education may, by majority vote, approve a conversion to a public charter school but not, subsequently, authorize that charter school. See KRS 160.1599(2)(b).

There are any existing public schools over which local school boards do not have authority. See comment upon 701 KAR 8:040."

(b) Response: The agency has previously addressed, above, the comment from OEA on this administrative regulation and the question of whether a public school that is not under the authority of the local board of education is eligible for conversion. For this reason, the response of the agency above is applicable to the response to this comment as well. Additionally, there are no known prohibitions on "any presently existing public school ... from becoming a public charter school." To clarify, "becoming a public charter school" is a more global phrasing than

the more narrow question of whether a currently existing school of any kind can convert to a charter school under KRS 160.1599 and this administrative regulation. The response of the agency on this clarification is as well included above.

Regarding the commenter's request for clarification as to whether an authorizer may approve by majority vote a conversion of a charter school in KRS 160.1599(2) yet still not "authorize that charter school", the agency's response is in the affirmative. The majority vote of a local board of education, pursuant to KRS 160.1599(2)(b) or (c) is not the final authorizer action required for conversion of a public school of the district to a conversion charter school, as described more fully in this administrative regulation. The conversion charter school process still requires an application submitted by an applicant to the authorizer for review and action under KRS 160.1590 to 160.1599 just like any other charter school application.

Finally, it is the agency's information that there are currently in Kentucky a few public schools that are not under a local board of education: Model Lab, Kentucky School for the Blind, Kentucky School for the Deaf, and the state-operated area technology centers.

For these reasons, a change has not been made to the administrative regulation in response to this comment.

4. Subject Matter: Reduction in force of teachers under KRS 161.800 and classified employees under KRS 161.011

(a) Comment: KSBA commented that Section 4 of this administrative regulation currently included provisions for continuing status teachers of the local school district who choose to leave employment with the district to work for the conversion charter school but that this section of the administrative regulation should be amended to add a provision clarifying that a reduction in teachers and classified employees employed by the local school district under KRS 161.800 and 161.011 respectively may be an outcome of the conversion of the existing public school of the local school district pursuant to the terms of KRS 161.800 and 161.011.

(b) Response: For clarity, the agency has made a change to Section 4 of the administrative regulation to include specific mention that conversion of an existing public school of the district may result in the circumstances described in KRS 161.800 and in 161.011 requiring the local school district superintendent to review whether reasonable reductions in teachers and classified employees of the local school district is necessary under KRS 161.800 and 161.011.

5. Subject Matter: Special education and conversion charter schools

(a) Comment: The National Center for Special Education in Charter Schools (NCSECS) commented that the administrative regulation does not include special education specific provisions and commented that a provision requiring an authorizer's review of the track record of the provision of special education services of the school proposed for conversion should be added.

(b) Response: The agency has considered the suggestion to add special education provisions to this administrative regulation and has declined to make this change to this administrative regulation because the change should more appropriately be to the other administrative regulations regarding all charter schools, not just conversion charter schools. In addition, 701 KAR 8:020 Section 4(8) requires the local school district superintendent to provide "information and evidence regarding the academic performance of the students identified in the charter

application as the targeted student body or community.”, which addresses the second part of this comment adequately. For this reason, the agency is not amending this administrative regulation in response to this comment but is amending the other administrative regulations in response to NCSECS’s comments requesting special education specific provisions in each of the administrative regulations.

6. Subject Matter: Student enrollment opportunities in conversion public schools

- (a) Comment: Ms. O’Reilly commented that she was concerned “about the implementation of charter schools and how they will be able to offer equal access to quality education due to funding issues that already exist in the state. As a proponent of the Annenberg Rules, the new regulations propose assurances for an open and transparent implementation. I especially applaud the message that there are no other requirements for attendance other than the desire to participate. However, I take issue with the state’s ability to convert entire schools to charters. Applications from financially troubled private schools could put an unnecessary strain on the public school system. In addition, provision for adding students to a converted school might be nil as the regulations give preference to those already attending the school. Finances and financing of public education could indeed be put at risk.

As a resident of Fayette County, a former member of the FCPS Magnet School Study Committee, and the parent of a child who attended a magnet program, I have seen lessons learned from those programs as they grew. We started small and worked through recruitment, transportation, curriculum and equity issues. Retention of those in the program became a priority. Unfortunately, not all charter programs address these issues with success.

I would like to see the Department of Education work across state level lines of authority to address housing and economic patterns that could doom any effort to improve our schools. Schools do not exist in a vacuum. Offering assistance to failing schools is as much an issue of housing patterns and poverty as it is of choice on the part of educators.

The success of our school systems depends on funding. We cannot continue to adopt choice without sufficient state dollars for implementation.

- (b) Response: The conversion school opportunity does not exist for private schools. Conversion, under KRS 160.1599 and this administrative regulation, is available only to those public schools currently existing and under the authority of a local board of education in Kentucky. As well, to the concern of the commenter about limited student enrollment opportunities for those students who did not previously attend the existing public school converted to a charter school, though the enrollment preference for the students who attend the existing public school prior to conversion is provided by the statutes, there may be student enrollment opportunities arising from individual family choices not to continue their student’s enrollment at the school once converted to a charter school or other family decisions which lead to an end of residence in the school district. Charter schools are schools of choice and the legislation clearly provides prohibitions on requirements for student attendance at a school, once converted. For the reasons stated above, the agency does not understand a change to the administrative regulation to be appropriate in response to this comment.

7. Subject Matter: Regional achievement zone charter schools and different authorizers

(a) Comment: Ms. Schaber commented that she was concerned that the administrative regulations did not adequately provide for regional achievement zone charter schools or authorizers other than a single local board of education.

(b) Response: The agency has reviewed the administrative regulation in light of this comment and has made changes to ensure full contemplation and inclusion of a charter school applicant or charter school that is in a regional achievement zone or that has as the authorizer an authorizer other than a single local board of education.

8. Subject Matter: Petitions and students of the existing public school who do not want to attend a conversion charter school

(a) Comment: Kentucky Education Association (KEA) commented that the administrative regulation should put a limit on the number of times a petition could be attempted for an existing public school to prevent “a constant state of uncertainty.” KEA also commented that conversion charter schools will “deprive neighborhoods of a local public school operated by the democratically elected school board of education. A majority of the school community will be empowered to deprive a dissenting minority of access to the existing neighborhood school and the services of the existing staff of that school by converting the existing school to a charter school.”

(b) Response: The agency appreciates the comments on this administrative regulation but responds that a limit on the number of petition attempts for an existing public school could be manipulated to exhaust that limit and preclude the families of an existing public school from exercising their rights to convert to a charter school if that is the existing public school community’s choice. Additionally in response to the concern expressed by the commenter about the students who attended the existing public school who do not want to attend the school after conversion to a charter school, the agency appreciates this comment but responds that this is an outcome of the legislation, not the administrative regulation. As well, no student is compelled to attend a charter school, conversion or start-up, so students who attended the existing public school prior to conversion are not required to attend the conversion charter school and could attend a school of the district instead. As a result, the agency has made no changes to the administrative regulation in response to this comment.

Summary of Statement of Consideration
Action Taken by Promulgating Administrative Body

The Kentucky Department of Education received and has responded to either (8) different categories of comments from the public regarding new administrative regulation 701 KAR 8:040. Commenters requested the allowance for conversion for schools that are not currently under a public local board of education. Commenter requested clarification of the agency’s authority for the deadline for petition and charter school application for conversion for the next school year. Commenter requested clarification on several questions relevant to the statutes. Commenter requested additional information in the administrative regulation on conversion and the potential for reduction in force of the local school district’s employees. Commenter requested special education specific provisions be added to the charter school administrative regulations.

Commenter commented on concern for funding for all public schools and concern that private schools in financial distress would apply for conversion and put a strain on the public school system. Commenter requested review and any amendment necessary to ensure the administrative regulation covered regional achievement zone charter schools and different types of authorizers. Commenter requested a limit on the number of conversion petition attempts that could occur for a currently existing public school under a local board of education and expressed concern for the students who attended the existing public school prior to conversion but who do not want to attend the conversion charter school.

The agency is not able to allow a current school, that is not under a local board of education, to convert to a charter school as that is not allowable under the statutes. The agency provided the statutory authority for the provisions of this administrative regulation and provided information on the statutory provisions. The agency added special education specific provisions to the administrative regulations on charter schools, where appropriate. The agency clarified that a private school is not eligible for conversion but the agency shares the overall concern for funding of the public education system. The agency reviewed all the charter school administrative regulations and made amendments to ensure inclusion of regional achievement zone charter schools and all authorizers. The agency did not place a limit on the number of conversion petition attempts for a currently existing public school under a local board of education as this could work to preclude that school from converting if that is the existing public school community's choice.

The agency proposes the following amendments after comments to the administrative regulation:

Page 5

Section 2(10)

Line 10

After "school district designee of", insert "each".

Before "local board of education", delete "the".

After "local board of education", insert "that has authority over the existing public school".

Page 5

Section 2(10)(b)4.

Line 18

After "4.", insert "Each".

Before "local board of education", delete "The".

After "local board of education", insert "with authority over the existing public school".

Page 5

Section 2(11)

Line 19

After "160.1599(2)(b).", insert "each".

Before "local board of education's", delete "the".

Page 6

Section 2(13)(a)

Line 9

After “(a)”, insert “Each”.

Before “local board of education”, delete “The”.

After “local board of education”, insert “with authority over the existing public school”.

Page 6

Section 2(14)

Line 12

After “vote by”, insert “each”.

Before “local board of education”, delete “the”.

Page 6

Section 2(14)(a)

Line 15

After “(a)”, insert “Each”.

Before “local board of education’s”, delete “The”.

Page 6

Section 2(14)(b)3.

Line 19

After “vote of”, insert “each”.

Before “local board of education”, delete “the”.

After “local board of education”, insert “with authority over the existing public school”.

Page 6

Section 2(15)

Line 20

After “vote by”, insert “each”.

Before “local board of education”, delete “the”.

Page 6

Section 2(15)(a)

Line 23

After “(a)”, insert “Each”.

Before “local board of education’s”, delete “The”.

Page 7

Section 2(15)(b)3.

Line 4

After “vote of”, insert “each”.

Before “local board of education”, delete “the”.

After “local board of education”, insert “with authority over the existing public school”.

Page 7

Section 2(16)(a)

Line 8

After “(a)”, insert “Each”.

Before “local board of education’s”, delete “The”.

Page 7

Section 2(16)(b)3.

Line 12

After “vote of”, insert “each”.

Before “local board of education”, delete “the”.

Page 7

Section 2(17)(b)

Line 19

After “(b)”, insert “Each”.

Before “local board of education”, delete “The”.

After “local board of education”, insert “with authority over the existing public school”.

Page 8

Section 3(2)

Line 3

After “After”, insert “each”.

Before “local board of education’s”, delete “the”.

Page 8

Section 3(2)

Line 6

After “conversion public charter school,”, insert “each”.

Before “superintendent”, delete “the”.

After “superintendent”, insert “of a district with authority over the existing public school”.

Page 8

Section 3(3)

Line 22

After “(3)”, insert “Each”.

Before “local board of education”, delete “The”.

After “local board of education”, insert “with authority over the existing public school”.

Page 9

Section 4(1)

Line 5

After “employment rights with the”, insert “local school”.

Page 9

Section 4(1)

Line 7

After “with the”, insert “local school”.

After “district.”, insert “Conversion of an existing public school of the local school district may result in the circumstances described in KRS 161.800 and 161.011 necessitating the local school district superintendent’s review of the necessity for a reasonable reduction in the number of teachers and classified employees employed by the local school district under KRS 161.800 and 161.011.”

Page 9

Section 4(2)

Line 8

After “employed by”, insert “a Kentucky local school”.

After “employed by”, delete “the”.

Page 9

Section 4(2)

Line 10

After “granted leave by the”, insert “employing”.

Page 9

Section 4(2)

Line 11

After “shall notify the”, insert “local school”.

Page 9

Section 5(1)

Line 17

After “(1)”, insert “Each local school”.

Before “district”, delete “The”.

After “district”, insert “with authority over the existing public school”.

Page 9

Section 5(1)

Line 19

After “any plan the”, insert “local school”.

After “district”, insert “shall”.

Before “use to”, delete “will”.

Page 10

Section 6(2)

Line 4

After “noncharter status,” insert “each”.

Before “local board of education”, delete “the”.

Page 10

Section 6(2)

Line 5

After “of education”, insert “with authority over the existing public school”.